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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO AMEND RULE 31(d),
ARIZONA RULES OF THE SUPREME
COURT

Supreme Court No. R-11-0001

Comment by Arizona Home Builders in
Support of the Petition to Amend Rule
31(d), Arizona Rules of the Supreme Court

Attached are petitions signed by representatives from numerous Arizona home builders explaining why we support the Petition to Amend Rule 31(d) of the Arizona Rules of the Supreme Court to allow management companies to prepare, sign, and file notices of liens created pursuant to A.R.S. § 33-1256 and § 33-1807 on behalf of HOAs.

Among the many home builders who support the proposed rule change are Apex Capital Management, LLC, Communities Southwest, D.R. Horton, Inc., Diamond Ventures, Inc., Everest Holdings, Lennar Arizona Inc., Pulte Group, Quantum Capital, Richmond American Homes, Rialto Capital, Shea Homes, Standard Pacific Homes of Arizona, T3 Homes, LLC, Taylor Morrison, and Terrawest Communities. The petition, included below, explains why we believe the Supreme Court should adopt the proposed rule change.

We are home builders who develop planned communities and condominiums across Arizona. Our developments – which range in size

1 from 15 units to nearly 8000 units – are in major metropolitan areas,
2 cities, small towns, and unincorporated areas of Coconino, Maricopa,
Pima, Pinal, and Yavapai Counties.

3 The planned communities and condominiums we develop are governed
4 pursuant to bylaws and declarations. By law, these must be included in
the closing documents given to purchasers. The governing documents
5 specify that that the planned communities and condominiums will be
managed, maintained, and improved by associations.

6 The declarations commonly provide for a period of “declarant control of
the association,” during which the developer has the authority to appoint
7 and remove the officers and members of the board of directors. We
commonly appoint our own employees as officers and board members
8 and then, through declarant-controlled boards, contract with
management companies to carry out the associations’ day-to-day
responsibilities.

9 Associations are authorized by declarations to collect assessments from
10 homeowners within our developments; they also authorized to record
notices of claims of lien for unpaid assessments. Our declarant-
11 controlled boards regularly delegate the responsibility for preparing,
signing, and filing notices of assessment liens to management
12 companies, who have performed these lien functions for associations for
decades without issue. The management companies have first-hand
13 knowledge of the dues and assessments, they interact with our
homeowners on a regular basis, and they are held accountable for
14 performing these tasks correctly through management contracts.
Moreover, based on our experience, we have found that it costs
15 significantly more to have lawyers to prepare, sign, and file notices of
assessment liens.

16 Our paramount responsibility is to our customers and our communities.
While associations remain under our control, we have duties to establish
17 a sound fiscal basis for the associations by imposing and collecting
assessments; to maintain records and to account for the financial affairs
18 of the associations from their inception; and to comply with and enforce
the terms of the governing documents, including the payment of
assessments. We believe that contracting with management companies
19 provides us with a reliable, effective, and efficient manner to fulfill
these duties. As such, we support the proposed change to Rule 31(d) of
20 the Arizona Rules of Supreme Court affirming the ability of
management companies to prepare, sign, and file notices of assessment
21 liens on behalf of associations.

22 RESPECTFULLY SUBMITTED this 24th day of June, 2011.

23 By: s/Chad Kolodisner
24 Chad Kolodisner
25 Vice President, Diamond Ventures
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